

An alternative explanation for his testimony is that Babbitt had a mistaken recollection of the specifics of the conversation and had committed himself to that recollection. An honest belief in the truthfulness of his recollection would constitute a defense to perjury because one of the elements of perjury is that the defendant willfully intended to provide false testimony. Babbitt testified that he believed his version was the correct version of what transpired in the July 14, 1995, meeting with Eckstein, but he left open the possibility that either he or Eckstein suffered from a failure of memory. *See* n. 709, *supra*.

In the final analysis, we concluded that the evidence was not sufficiently strong to convince a jury beyond a reasonable doubt that Babbitt intended to provide false testimony concerning the Eckstein conversation.

**2. There Is Insufficient Evidence to Prove that Babbitt Perjured Himself in Testifying About Whether He Intended to Mislead Sen. McCain with His Aug. 30, 1996 Letter**

The second area of testimony on which we focused as a potential basis for a perjury prosecution was Babbitt's testimony that he did not intend to mislead Sen. McCain with his letter to the Senator dated Aug. 30, 1996. Babbitt's letter was a response to a written inquiry from Sen. McCain which had been spurred by allegations in a July 12, 1996, Wall Street Journal article suggesting that the Hudson casino decision had been corrupted. The article had alleged that opponents of the proposed facility had made campaign contributions to gain a denial of the application, and included a recounting of Eckstein's version of the July 14, 1995, meeting. In McCain's July 19, 1996, letter to Babbitt, he posed a series of specific questions; among those questions was one pertaining specifically to Babbitt's conversation with Eckstein:

Paul Eckstein, the lobbyist for Indian tribes on the other side of the dispute, has sworn in an affidavit that he met with you on July 14, 1995 and that you told